FILED
MAY 5 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 493

CITY OF CHICAGO, a Municipal Corporation,
Petitioner,

vs.

THE WILLETT COMPANY, an Illinois corporation,
Respondent.

PETITION FOR REHEARING AND FOR STAY OF MANDATE.

JOHN J. MORTIMER,
Corporation Counsel of the City of Chicago,

L. LOUIS KARTON,
Head of Appeals and Review Division,

ARTHUR MAGID,
Assistant Corporation Counsel,
511 City Hall,
Chicago 2, Illinois,
Attorneys for Petitioner.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

SUBJECT INDEX.

PAGE

Certificate of Counsel 4

Petition for Rehearing and for Stay of Mandate 1-4

Prayer 4

CASES CITED.

City of Chicago v. The Willett Company, 306 Ill. 286.. 3

Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109, 68 L. ed. 582 2

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 493

CITY OF CHICAGO, a Municipal Corporation,
Petitioner,

vs.

THE WILLETT COMPANY, an Illinois corporation,
Respondent.

PETITION FOR REHEARING AND FOR STAY OF MANDATE.

Now comes the City of Chicago, a Municipal Corporation, Petitioner, by its attorneys, and requests a rehearing of the order entered by this court in this cause on April 23, 1951, but only to the extent that said order vacates the judgment of the Supreme Court of Illinois and remands the cause to that court for clarification as to whether the judgment of that court rests on an adequate and independent state ground, or whether decision of a federal question was necessary to the judgment rendered. It is also prayed that issuance of the mandate be stayed pending the disposition of this petition for a rehearing.

The ground upon which a rehearing is asked is that the decision of the Supreme Court of Illinois excluding from the reach of the ordinance vehicles operated in nonsepar-

able local and interstate transportation rests, not upon a construction of the ordinance as not applying to such vehicles, but upon the erroneous determination by that court that, because of such inseparability, without more, the imposition of a municipal tax upon the local operations of such vehicles is precluded by the commerce clause of the Federal Constitution.

In *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 68 L. ed. 582, this court held (p. 120) that a decision of the highest court of a state excluding maritime contracts from the operation of a state arbitration statute, not as a matter of statutory construction but due to its opinion that the Federal Constitution so required, presented a federal constitutional question reviewable by this court.

The only problem of construction presented to the Supreme Court of Illinois was whether the phrase "within the city" used in the ordinance included interstate shipments carried by vehicles operating within the city limits or applied only to purely local business. The defendant contended that the ordinance applied indiscriminately both to interstate and intracity business done within the city limits, and was, therefore, invalid as an attempt to tax interstate commerce. The city took the position that the ordinance sought to tax only such operations as were purely local. The Supreme Court of Illinois properly construed the ordinance as not applying to interstate business, but only to local business, intrastate in character. The court then pointed out that, upon such construction, the ordinance was clearly valid under the commerce clause of the Federal Constitution, and, referring to *Osborne* v. *Florida*, 164 U. S. 650, said that that case was authority for the rule that a statute (or ordinance) so construed does not exempt the carrier from taxation upon its business which is solely within the State (or city), even though at the same time the same company may do a business which

is interstate in character. (*City of Chicago* v. *The Willett Company*, 306 Ill. 286, 290.)

It is clear from the foregoing that the Supreme Court of Illinois did not construe the ordinance to mean that if a vehicle was operated in both interstate and intracity commerce it was not subject to the tax upon its purely local operations. Such a construction would have been manifestly unreasonable, since the carrying of a single interstate parcel on a single day of the year by a vehicle otherwise engaged exclusively in local commerce would permit such vehicle to escape the tax. However, as already stated, the court did not so construe the ordinance, but specifically declared that a vehicle operated both in intracity and interstate commerce may be municipally taxed on the former, although not on the latter.

While the opinion of the Supreme Court of Illinois might well have been more explicit, it is nevertheless clear from a reading thereof that what impelled the court to hold that defendant's vehicles were not subject to the tax even as to their intracity business was, *first*, its conclusion that defendant's intracity and interstate operations were inseparable, and *second*, (and this is the crux of the court's decision), that this factor of inseparability, without more, clothed defendant's entire operations with an interstate character and precluded the levying of the tax even upon the purely local portion of defendant's intertwined operations. This holding is clearly contrary to the well-settled doctrine announced by this court that a mere showing of inseparability, without a showing of undue burden, does not place the local operations beyond the reach of the local taxing power.

It is accordingly respectfully submitted that the determination of the Supreme Court of Illinois excluding defendant's purely local operations from the reach of the ordi-

nance clearly rests upon that court's erroneous decision of a federal question arising under the commerce clause of the Federal Constitution.

Prayer.

Wherefore petitioner prays that the issuance of the mandate be stayed pending the disposition of this petition for a rehearing; that a rehearing be granted; and that, upon such rehearing, this court, having granted certiorari, retain jurisdiction of this cause for the purpose of passing upon the federal question presented.

Certificate of Counsel.

Each of the undersigned, attorneys for petitioner, hereby certify that the above and foregoing Petition for Rehearing is presented in good faith and not for delay; and also certify that said petition is restricted to intervening circumstances of substantial and controlling effect, and to other substantial grounds not heretofore available to petitioner, and for that reason not previously presented, the first occasion for such petition for rehearing arising from that part of the order entered by this court in this case on April 23, 1951, vacating the judgment of the Supreme Court of Illinois and remanding the cause to that court for clarification of the ground of decision.

Respectfully submitted,

JOHN J. MORTIMER,
Corporation Counsel of the City of Chicago,
L. LOUIS KARTON,
Head of Appeals and Review Division,
ARTHUR MAGID,
Assistant Corporation Counsel,
511 City Hall, Chicago 2, Illinois,
Attorneys for Petitioner.